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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 695/2015*, **

Submitted by:	J.S. (represented by counsel, Rajwinder S. Bhambi)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	10 August 2015 (initial submission)
Date of present decision:	28 November 2017
Subject matter:	Deportation to India
Procedural issues:	Exhaustion of domestic remedies; level of substantiation of claims
Substantive issues:	Non-refoulement; risk of torture upon return to country of origin
Article of the Convention:	3

1.1 The complainant is J.S., an Indian national, born on 15 July 1991. He claims that his deportation to India by Canada would violate his rights under article 3 of the Convention, which came into force in Canada on 24 June 1987. On 13 November 1989, Canada made the declaration under article 22 (1) of the Convention recognizing the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. The complainant is represented by counsel.

1.2 On 11 August 2015, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while the complaint was being considered by the Committee. On 6 October 2015, the State party informed the Committee that the complainant's removal had been deferred in accordance with the Committee's request.

1.3 Upon the State party's request, on 21 February 2017 the Committee, acting through its Rapporteur on new complaints and interim measures, reviewed its interim measures request, in the light of information received from the State party, and decided to lift its request, pursuant to rule 114, paragraph 3, of its rule of procedure.

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller-Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.

The facts as submitted by the complainant

2.1 The complainant was born in the village Govindpura Satwari, Jammu and Kashmir State, India, near the border with Pakistan, to a Sikh family. He submits that his father owned and operated a trucking business that transported dry loads to different states in India. On an unspecified date, the police found one of his father's trucks — which had been abandoned by an employee (driver) of the father — containing explosives. On 6 June 2009, the complainant's father was apprehended by the police in connection with the abandoned truck. While in detention, his father was tortured and accused of aiding Sikh and Muslim terrorists. He was released on 9 June 2009 after the intervention of local officials and after paying a bribe of 50,000 rupees. He was also told to report to the police if he received any information about the driver. Owing to the acts of torture he had allegedly suffered, the father needed medical treatment in hospital. In August 2009 and October 2009, the father was again detained and tortured by the police, then released after paying a bribe. On 19 October 2009, the father decided to complain about the ill-treatment he had received from the police and arranged to meet with a lawyer. The day of the scheduled meeting, the father disappeared. The complainant's family believes that the police was behind the father's disappearance. According to the complainant, villagers informed him and his family that there had been a police raid and they had seen the father with the police on the outskirts of the village.

2.2 Shortly after the father's disappearance, the police started coming to the complainant's home saying that the father had joined "militants". The complainant and his family were allegedly harassed by the police on a regular basis and questioned about the father's whereabouts. In December 2009, the complainant and his family moved to a remote location in Jammu and Kashmir State to avoid the constant harassment.

2.3 On 24 December 2009, the police raided the complainant's new home in Jammu. The complainant submits that he was arrested and taken to a police station, where he was interrogated and tortured for three days. He alleges that he was slapped, kicked, punched, beaten with sticks and belts and electrocuted, and that the police accused him of knowing where his father was and accused his family of "working with Sikh and Muslim terrorists". He was released on 27 December 2009 after the intervention of local officials and after paying a bribe, on the condition that he report monthly to the police starting on 1 February 2010. The complainant alleges that he was serious injured immediately after his release and taken in an ambulance to a hospital, where he stayed for 2 days. He submits that he suffered internal and external injuries, notably marks and swelling from lashes, and was stressed and depressed.[1]

2.4 Fearing for his life, late in January 2010, the complainant left his home for that of his relatives in the village of Ambgarh, Jalandhar, Punjab State, but they refused to let him stay. Later, the complainant left India by aeroplane from Delhi airport, using his own passport. He arrived in Canada on 1 September 2010, with a visa obtained with the help of a smuggler. The complainant submits that, after his departure from India, the police there continued to harass his family. Notably, in February 2010, he alleges that police officers arrested and tortured his mother. The police maintained that the complainant had joined militants and had collected funds from abroad for militias. His mother was released after paying a bribe and with the help of influential people.

2.5 On 13 June 2011, the complainant lodged an asylum request before the Refugee Protection Division of the Immigration and Refugee Board of Canada.

2.6 In February 2013, the complainant's mother moved to his uncle's house in the village of Maralian, outside Miran Sahib, to escape from the police. In the evening of 1 March 2013, his uncle was arrested by police officers. Despite the family's efforts that evening and the next day, they could not locate the uncle. Later, the family received a telephone call from an unknown person stating that a severely injured person had been

[1] A medical certificate dated 16 September 2014 States that the complainant had been treated on 27 December 2009 by a doctor at an unnamed hospital. The certificate also states that the complainant had come to the hospital with internal and external injuries, notably marks and swelling from lashes, had been stressed and depressed and had been hospitalized for two days before receiving further treatment at home for 10 days, and medication.

found next to a highway and brought to a hospital, but had passed away.[2] The family went to the hospital, but the police did not hand over the body to the family so it could be cremated according to Sikh religion and rites and did not allow an autopsy to be performed. Against that background, the family believed that the uncle had been tortured and killed by the police.

2.7 On 4 December 2014, the Refugee Protection Division rejected the complainant's application for asylum, having found that his accounts had not been credible and that he had an internal flight alternative. It found, inter alia, that it was not credible that the police would have released the father after paying a small bribe if they had suspected him of being involved in terrorist activities including explosives. Likewise, it found implausible that, if the police had been looking for the complainant for suspected militant activities, he would have been able to pass through the security checks at Delhi airport using his own passport. The Division also stated that, during the proceedings, the complainant had given four different versions of what the police had told his father on his father's initial release on 9 June 2009 regarding the truck. Likewise, in his application for asylum, the complainant had stated that, on 24 December 2009, the police had accused him and his family of working for Sikh and Muslim militants, but had maintained that the police had asked him about his father's whereabouts and where the explosives were. Finally, the Division stated that, when interrogated about the medical certificate dated 16 September 2014 and about what exact treatment the doctor had performed, the complainant had repeated what was mentioned in the certificate and had not mentioned that any X-rays had been performed. When he later acknowledged that X-rays had been performed, he could not explain why he had omitted to mention that in his application and why it was not reflected in the medical certificate. Against that background, the Division gave the medical certificate "no probative value".

2.8 The complainant applied to the Federal Court of Canada to submit an appeal against the judicial review of the decision of the Refugee Protection Division, but his request was rejected on 18 March 2015.

2.9 The complainant submits that, on 4 June 2015, plainclothes police officers arrested his mother and accused the complainant of being behind a Sikh protest that had taken place in Jammu that day, and that he and other Sikhs had financed the protest from Canada. He also submits that his mother was detained and tortured for four days, and released after paying a bribe of 100,000 rupees on condition that she make the complainant return to India and surrender to the police.

2.10 On 2 August 2015, the complainant applied to the Canada Boarder Services Agency to have his removal deferred. That application was under consideration at the time the present complaint was submitted to the Committee. The complainant maintains that he had informed relatives and friends in India about his deportation, that someone had passed that information on to the police and that police officers had come to his village and announced that they knew he was about to be deported.

2.11 The complainant alleges that, with the decision of the Federal Court of 18 March 2015, he has exhausted all domestic remedies and there is no other remedy available to him in the State party. Notably, at the time his complaint was submitted to the Committee, he could not apply for a pre-removal risk assessment, since failed asylum seekers cannot by law apply for such an assessment within one year of a refused refugee application.

The complaint

3. The complainant claims that, by deporting him to India, the State party would violate article 3 of the Convention, as he would be at risk of being subjected to torture or other cruel treatment or punishment. The State party authorities arbitrarily dismissed his asylum request without giving due consideration to the documentation submitted in support of his allegations.

[2] The complaint provides a copy of a death certificate that indicates that G.S. died on 3 March 2013 and had been brought dead to the hospital at 3.15 a.m.

State party's observations on admissibility and merits

4.1 On 6 October 2015 and 10 February 2016, the State party submitted its observations on admissibility and merits and requested the Committee to lift its interim measures request of 11 August 2015. The State party maintains that the complaint is inadmissible on grounds of failure to exhaust domestic remedies and is manifestly unfounded.

4.2 The State party maintains that the complainant has failed to exhaust all domestic remedies since, on 5 December 2015, he became eligible to apply for a pre-removal risk assessment and for a residence permit on the basis of humanitarian and compassionate considerations; that both procedures are effective domestic remedies; and that, in the event of a negative decision on either his pre-removal risk assessment or humanitarian and compassionate application, he could apply to the Federal Court for judicial review. With regard to the pre-removal risk assessment, the State party stated the complainant would be notified promptly of his eligibility and would be given the opportunity to submit an application. Should an assessment application be filed, the complainant would benefit from a stay of removal pending a decision on his assessment. The assessment scheme is founded on the principle of non-refoulement, in accordance with which a person should not be removed from Canada to a country where he or she would be at risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment. For persons like the complainant who have already had their claim determined by the Refugee Protection Division, a pre-removal risk assessment application is an evaluation largely based on new facts or evidence that may demonstrate that the person is now at risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment. Its purpose is to assess whether there have been any new developments since the final determination by the Division that could affect the risk assessment. For that reason, section 113 (a) of the Immigration and Refugee Protection Act provides that evidence submitted for the purpose of a pre-removal risk assessment must be new evidence that arose after the rejection of the claim for refugee protection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. If the complainant is determined by an assessment officer to be in need of protection, he would not be removed from Canada and would be eligible to apply for permanent resident status.

4.3 The complainant also became eligible to apply for humanitarian and compassionate considerations. When a humanitarian and compassionate application is made by a foreign national in Canada, such as the complainant, it must be considered by the Minister of Immigration, Refugees and Citizenship or his delegate. The assessment of a humanitarian and compassionate application consists of a broad, discretionary review by the decision-maker to determine whether a person should be granted permanent residency from within Canada for humanitarian and compassionate reasons. The decision-maker considers and weighs all relevant humanitarian and compassionate considerations in a particular case, and may be guided in that assessment by considering whether an applicant would experience unusual and undeserved or disproportionate hardship if he or she had to apply for a permanent resident visa from outside of Canada. A stay is not automatically available on an application for humanitarian and compassionate consideration. However, if compelling humanitarian and compassionate grounds can be demonstrated, a stay of removal may be granted until a final decision is made on the application for permanent residence.

4.4 The State party disagrees with the Committee's jurisprudence in which the humanitarian and compassionate application was considered a remedy that should not be exhausted for the purposes of admissibility of a complaint submitted to the Committee under article 22 of the Convention.[3] In that respect, it maintains that, under section 25 (1) of the Immigration and Refugee Protection Act, once an individual submits a humanitarian and compassionate application, the Minister must examine that individual's circumstances. Humanitarian and compassionate officers, like pre-removal risk assessment officers, are senior immigration officials employed by Immigration, Refugees and Citizenship Canada,

[3] The State party refers to *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 8.3; *T.I. v. Canada* (CAT/C/45/D/333/2007), para. 6.3; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4.

and domestic courts have determined that humanitarian and compassionate officers are as independent and impartial as pre-removal risk assessment officers.[4]

4.5 As to the possibility of judicial review of the humanitarian and compassionate considerations and pre-removal risk assessment decisions, the State party notes inter alia that the function of judicial review is to ensure the legality, the reasonableness and the fairness of the decision-making process and its outcomes. The grounds for review listed in section 18.1 (4) of the Federal Courts Act cover all of the substantive ways in which a decision could potentially be reviewed in any context: whether the decision-maker acted within its jurisdiction; whether the decision-maker complied with procedural fairness principles; whether the decision-maker made a factual error; and whether the decision-maker made a legal error. Thus, in order properly to carry out its responsibilities, the Federal Court would necessarily need to review an applicant's claim of being returned to torture in his or her country of origin.

4. 6 The State party provides a detailed description of the asylum proceedings under the Immigration and Refugee Protection Act and points out that the complainant's asylum request was first examined by the Refugee Protection Division, which is an independent, quasi-judicial, specialized tribunal. At that hearing, he was represented by counsel and had the right to provide documentary evidence and oral testimony and to make submissions. Subsequently, the Federal Court examined his application for leave to seek judicial review on 18 March 2015.

4.7 The complaint is manifestly unfounded. It is essentially based on the same allegations that the complainant had made before the State party's authorities in domestic proceedings, which were found to be without merit by independent and impartial decision-makers. The complainant has not demonstrated that he personally faces a real risk of irreparable harm if returned to India. The Refugee Protection Division denied his refugee claim on the basis that his allegations were not credible and that he had an internal flight alternative. It stated that his accounts had been implausible, and that there had been omissions and contradictions in the evidence given. The complainant had been given the opportunity to explain the inconsistencies in his evidence at the hearing, but the Division had not found his explanations convincing.

4.8 The State party refers to the decision by the Refugee Protection Division and maintains that the complainant's allegations that the Indian police perceive him to be a supporter of terrorism are not credible, in particular because, if he had been a terrorist suspect, he would not have been allowed to travel to Canada from Delhi using a passport in his own name. Likewise, when he was allegedly detained by the police, he was released upon payment of a small bribe and without any charges having been brought. There is no information to suggest that the central authorities in India would have any interest in the complainant. The Division also took note of the fact that the complainant had lived in Jalandhar for several months without incident prior to his departure from India; and that he had made inconsistent claims about his mother's whereabouts. Finally, the Division also considered that, even if his allegations were accepted as true, the complainant had an internal flight alternative.

4.9 Likewise, the complainant has provided no relevant evidence substantiating his father's disappearance. He also stated that, because of the torture inflicted on him while in detention, he had been hospitalized for two days in 2009 and treated at his home for another 10 days. However, the only evidence that he provided in support of that assertion was a medical certificate post-dated from 2014. In addition, his description of his injuries was limited to broad assertions, such as "serious internal injuries" and "serious external injuries", and he was unable to describe his injuries in any detail. The complainant also claims that his family has continued to be harassed by police since his departure from India and that his uncle was killed by the police in March 2013. Nevertheless, those assertions are not supported by relevant documentary evidence. Moreover, despite the public nature of his

[4] The State party refers to *Say v. Canada (Solicitor General)*, 2005 FC 739, decision upheld on appeal; *Say v. Canada (Solicitor General)*, 2005 FCA 422, leave to appeal to the Supreme Court of Canada dismissed on 27 April 2006; *Chea Say and Vouch Lang Song v. Canada (Solicitor General)*, 2006 CanLII 13748 (SCC); and *Nalliah v. Canada (Solicitor General)*, 2004 FC 1649, para. 13.

uncle's death, the complainant has not provided the Committee with evidence of local news coverage.

4.10 The State party notes that the complainant arrived in Canada with a visitor visa and using his own passport and that he resided in the State party for approximately nine months before claiming refugee protection. It also points out that he made inconsistent allegations about his mother's current whereabouts. While he stated in his request for deportation deferral before Canada immigration authorities that the police never released his mother after his arrest in June 2015 and that she was presumed to have been killed, he later stated in his complaint before the Committee that his mother had been released on 8 June 2015, after four days of detention. Moreover, he also submitted an affidavit by his mother dated 24 July 2015, which disproved his assertion that she was missing.

4.11 Even if one accepts the complainant's allegations as true, there is no reasonable basis on which to conclude he faces a real risk of irreparable harm upon return. The alleged ill-treatment did not occur in the recent past but 8 years ago, in 2009. In addition, there is no objective evidence that he would be sought throughout India. Current conditions in India as established by objective country reports make it apparent that the complainant has an internal flight alternative. Reports concerning country conditions in India indicate inter alia a marked improvement in the human rights situation for Sikhs to the extent that it can no longer be said that there is a general risk of ill-treatment on return solely on the basis of one's real or perceived political opinion. Only those high-profile militants actively engaged in or perceived to be engaged in or supporting militant activity are likely to be of interest to central authorities on return to India.[5] Even where a country report indicates that Sikhs who hold or advocate particular political opinions may be subject to harassment, detention, arbitrary arrest or torture, such occurrences are typically confined to Punjab State.[6] Country reports further indicate that the actions of the local police in Punjab are most often not politically or religiously motivated towards a particular group or cause, but rather the police in that region fabricate charges under the guise of suppressing threats, political or otherwise, in order to extract bribes.[7] Sikh minorities living in states outside of Punjab have the freedom to practise their religion and have access to education, employment, health care and housing.[8]

Complainant's comments on the State party's observations

5.1 On 28 December 2015 and 2 September 2016, the complainant provided comments on the State party's observations on admissibility and merits and on its request to lift interim measures. He reiterated that, if returned to India, he would be at real risk of torture and pointed out that he had submitted relevant documentation to the State party's authorities that had confirmed his allegations, such as a medical certificate issued by the doctor who had treated him in hospital on 27 December 2009, confirming his allegations of injuries as result of torture.[9] He alleged that he had marks of torture on his body as shown in pictures and that he and some of his relatives had been subjected to torture by the Indian police.

5.2 In general, there is a high level of impunity of the Indian police concerning extrajudicial executions, torture and other crimes, in particular in the Jammu and Kashmir

[5] The State party refers to the report by the Home Office of the United Kingdom of Great Britain and Northern Ireland, "Operational Guidance Note: India" (May 2013), available from www.refworld.org/docid/51a890674.html; the United States of America Bureau of Citizenship and Immigration, "India: Information on relocation for Sikhs from Punjab to other parts of India" (16 May 2003), available from www.refworld.org/docid/3f520d4b4.html; and United Kingdom Home Office, "Operational Guidance Note: India" (20 February 2007), available from www.refworld.org/category,POLICY,,,IND,46028cc82,0.html.

[6] The State party refers to the report by the Immigration and Refugee Board of Canada, "Situation of Sikhs outside the state of Punjab, including treatment by authorities; ability of Sikhs to relocate within India, including challenges they may encounter (2009-April 2013)" (13 May 2013). Available at: https://www.justice.gov/sites/default/files/eoir/legacy/2014/02/04/IND104369.E.pdf.

[7] Ibid.

[8] Ibid.

[9] See footnote 2 above.

region. Despite the improvements of the situation of Sikhs in India, they are still victims of severe ill-treatment and torture by State agents in various regions.[10] In particular, minorities are targeted on a large scale in the Gujarat, Punjab and Jammu and Kashmir regions. Moreover, the Prime Minister of India and head of the ruling party have been accused of involvement in the systematic killing of thousands of Muslims in Gujarat State in 2002. In 2016, the situation in Jammu and Kashmir deteriorated and, on 15 July of that year, a curfew was imposed in all districts of the Kashmir Valley. The police and paramilitary forces resorted to excessive use of force against protesters, resulting in the deaths of more than 70 persons.

5.3 The complainant argues that the Indian authorities are not able to adequately protect its citizens against police abuses. Furthermore, persons who file a complaint are often arrested, killed or disappeared as reprisals. If returned to India, he is likely to be arrested by the police or security forces and subjected to criminal proceedings. The police might implicate him under false, frivolous or fabricated charges under the Prevention of Terrorism Act, especially articles 121 and 121 (a), which carry a maximum punishment of death or life imprisonment. He also submits that, since June 2005, Indian courts have convicted more than 100 former police officers for killings related to false terrorism-related charges.

5.4 In relation to the question of an internal flight alternative, the complainant alleges that, when the persecutors are State agents, there is no internal flight alternative available. Furthermore, there is a systematic pattern of surveillance and control over new arrivals in other parts of India, particularly for those who speak Punjabi or who are Sikh. It would therefore be extremely difficult, if not impossible, for him to be safe in India.

5.5 The complainant submits that he has exhausted all available domestic remedies. The pre-removal risk assessment and the humanitarian and compassionate applications do not provide an effective relief to a person who is at risk of torture if returned to his or her country of origin. In his case, the Immigration and Refugee Protection Act was not available at the time he submitted his complaint to the Committee. Despite the fact that he had become eligible to apply for a pre-removal risk assessment on 5 December 2015, at the time his comments on the State party's observations were submitted to the Committee, the Canada Boarder Services Agency had not offered him the possibility to apply. He argues that it is for the Agency to decide whether to invite him for a pre-removal risk assessment after the one-year period. Moreover, the mere eligibility to apply for an assessment does not constitute stay of removal unless the Agency initiates or offers an assessment to the complainant. In any case, there is a high rejection rate of pre-removal risk assessment applications, and it is likely that such an assessment would, in his case, be rejected.

5.6 The complainant informs the Committee that, on 8 August 2016, he applied for permanent residence on humanitarian and compassionate grounds under section 25 of the Immigration and Refugee Protection Act. However, he argues that the application for humanitarian and compassionate considerations does not constitute an effective domestic remedy since it does not stay deportation, it lasts only between 48 and 57 months and the success rate is very low. Likewise, applications to defer removal are rarely granted by the Canada Boarder Services Agency. Although an applicant can seek judicial review of a dismissal of a pre-removal risk assessment, a humanitarian and compassionate considerations application or a deferral of removal application, those proceedings are very expensive, ineffective and unlikely to bring relief to the applicant since there is low chance of success.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do so under article 22 (5) (a) of the Convention, that the

[10] The complainant refers to the 2013 and 2014 United States Department of State country reports on human rights practice in India.

same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22 (5) (b) of the Convention on the grounds that the complainant has failed to exhaust all domestic remedies. It recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. That rule does not apply where it has been established that the application of said remedies has been unreasonably prolonged or is unlikely to bring effective relief.[11]

6.3 The Committee notes that, according to the information submitted by the parties, the complainant filed two humanitarian and compassionate applications, on 8 August 2016 and 10 July 2017, and that at least the latter one is still pending. However, in any event, the Committee considers that the humanitarian and compassionate application is not an effective remedy for the purposes of admissibility pursuant to article 22 (5) (b) of the Convention, given its discretionary and non-judicial nature and the fact that it does not stay the removal of a complainant.[12]

6.4 The Committee also notes the State party's observations that, when the applicant has already had his or her claim determined by the Refugee Protection Division, the pre-removal risk assessment — as in the complainant's case — is based largely on any new facts or evidence[13] that may demonstrate that the person is at risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment; that the pre-removal risk assessment application stays the removal; and that, in the event of a negative decision of the assessment, the person can apply for judicial review to the Federal Court. The State party further maintains that the complainant's application for a pre-removal risk assessment was dismissed by the assessment officer on 8 June 2017 and that, although the assessment decision may be subject to judicial review by the Federal Court with leave and a judicial stay of removal pending the final decision may also be available, the complainant has failed to apply for leave to seek judicial review.

6.5 In the present case, the Committee observes that, in his pre-removal risk assessment application, the complainant submitted new evidence that had not been considered previously by the Refugee Protection Division and the Federal Court within the asylum proceedings. The assessment officer took that new evidence into account and assessed it, together with information about the human rights situation in India (see para. 6.2 above). Nevertheless, the assessment officer concluded that the complainant had not rendered it probably that he would be at personal risk to life or of cruel and inhuman treatment if returned to India. The Committee further observes that, according to section 18.1 (4) of the Federal Courts Act, a judicial review of a pre-removal risk assessment decision by the Federal Court is not limited to errors of law and mere procedural flaws, and that the Court may look at the substance of a case. The Committee also observes that the complainant has not put forward arguments substantiating his allegation that that judicial review of the assessment decision is not an effective remedy. He merely argues that the procedure is very expensive and ineffective since there is a low chance of success. In that regard, the Committee considers that the mere doubt about the effectiveness of a remedy does not dispense a complainant with the obligation to exhaust it. The Committee therefore concludes that the complainant has failed to advance sufficient elements that would show that the judicial review of the pre-removal risk assessment would be ineffective in his case. Furthermore, the Committee notes that the information provided by the parties does not indicate that the complainant had been represented by a State-appointed lawyer, and recalls its jurisprudence that errors made by a privately retained lawyer cannot normally be attributed to the State party.[14]

[11] See, inter alia, *E.Y. v. Canada* (CAT/C/43/D/307/2006), para. 9.2.

[12] See *J.M. v. Canada* (CAT/C/60/D/699/2015), para. 6.2; *A v. Canada* (CAT/C/57/D/583/2014), para. 6.2; and 520/2012, *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4.

[13] See section 113 (a) of the Immigration and Refugee Protection Act.

[14] See *R.S.A.N. v. Canada* (CAT/C/37/D/284/2006), para. 6.4.

6.6 Accordingly, in the particular circumstances of the present case, the Committee considers that the complainant has failed to exhaust all domestic remedies since he did not file an application for judicial review of the pre-removal risk assessment decision of 8 June 2017 before the Federal Court. In light of this finding, the Committee does not deem it necessary to examine the State party's assertion that the complaint is inadmissible as manifestly unfounded.

7. The Committee therefore decides:

(a) That the complaint is inadmissible under article 22 (5) (b) of the Convention;

(b) That this decision shall be communicated to the complainant and to the State party.